

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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WILLIAM J. WILLIAMS and LYNNE WILLIAMS,

Plaintiffs,

-against-

BLACK & DECKER (U.S.) INC.

Defendant.
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MEMORANDUM AND ORDER

Case No. 08-CV-3910 (FB)

Appearances:

For the Plaintiff:

GEORGE NORMAN STATFELD, ESQ.
3 West 35th Street
New York, NY 10001

For the Defendant:

ROBERT A. CALINOFF, ESQ.
Calinoff & Katz, LLP
245 Fifth Avenue, 10th Fl.
New York, NY 10016

BLOCK, Senior District Judge:

For the reasons stated in court today, the defendant's motion for summary judgment pursuant to Federal Rule of Civil Procedure 56 is denied in part and granted in part.

The motion is granted with respect to plaintiffs' claims for breach of express and implied warranty. Unless a warranty explicitly covers future performance, the statute of limitations under New York law for breach of warranty against a manufacturer is four years from "the date the party charged tenders delivery of the product." *See Heller v. U.S. Suzuki Motor Corp.*, 64 N.Y. 2d 407, 411 488 N.Y.S. 2d 132 (1985). Because defendant tendered delivery over four years before plaintiffs commenced this action, the action is time barred.

The motion is denied with respect to plaintiffs' remaining claims. Trial will go forward on plaintiffs' claims that (1) the saw was defectively designed; (2) defendant was negligent; and (3) defendant failed to adequately warn plaintiff William J. Williams of the danger of using the saw without the guard in place.

SO ORDERED.

FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
January 26, 2011